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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/635,350	08/06/2003	Debra L. Koplish	DLK-101A	8897

7590 01/20/2006

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EXAMINER
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WEINSTEIN, STEVEN L

ART UNIT	PAPER NUMBER
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1761

DATE MAILED: 01/20/2006

Please find below and/or attached an Office communication concerning this application or proceeding.

<b>Office Action Summary</b>	<b>Application No.</b> 10/635,350	<b>Applicant(s)</b> KOPLISH, DEBRA L.	
	<b>Examiner</b> Steven L. Weinstein	<b>Art Unit</b> 1761	

**-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --**

**Period for Reply**

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

**Status**

- 1) ☒ Responsive to communication(s) filed on 03 November 2005.
- 2a) ☒ This action is **FINAL**.                      2b) ☐ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

**Disposition of Claims**

- 4) ☒ Claim(s) 21-40 is/are pending in the application.
- 4a) Of the above claim(s) \_\_\_\_\_ is/are withdrawn from consideration.
- 5) ☐ Claim(s) \_\_\_\_\_ is/are allowed.
- 6) ☒ Claim(s) 21-40 is/are rejected.
- 7) ☐ Claim(s) \_\_\_\_\_ is/are objected to.
- 8) ☐ Claim(s) \_\_\_\_\_ are subject to restriction and/or election requirement.

**Application Papers**

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on \_\_\_\_\_ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.  
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).  
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

**Priority under 35 U.S.C. § 119**

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All    b) ☐ Some \* c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
2. ☐ Certified copies of the priority documents have been received in Application No. \_\_\_\_\_.
3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).
- \* See the attached detailed Office action for a list of the certified copies not received.

**Attachment(s)**

- |  |   |
|--|---|
| 1) <input checked="" type="checkbox"/> Notice of References Cited (PTO-892)  | 4) <input type="checkbox"/> Interview Summary (PTO-413)<br>Paper No(s)/Mail Date. _____ |
| 2) <input type="checkbox"/> Notice of Draftsperson's Patent Drawing Review (PTO-948)                                   | 5) <input type="checkbox"/> Notice of Informal Patent Application (PTO-152)             |
| 3) <input type="checkbox"/> Information Disclosure Statement(s) (PTO-1449 or PTO/SB/08)<br>Paper No(s)/Mail Date _____ | 6) <input type="checkbox"/> Other: _____  |

Art Unit: 1761

Claims 21-27 and 35-40 are rejected under 35USC112, 1<sup>ST</sup> paragraph for containing New Matter. The phrase that the wrap is "fully wrapped" around the substantially vertical walls is considered to be New Matter. Nowhere in the specification is the "fully wrapped" concept disclosed.

Claims 21-40 are rejected under 35USC103(a) as being unpatentable over Good Housekeeping (1961), as evidenced by Step-by-Step (1994), Wilton (1994), Wilton (1996), Wilton (1997), and Birthday Cakes (1994), further in view of Disney (5/2/96) and Stewart et al ('897), further in view of Jamin ('423), all of whom are applied for the reasons fully and clearly detailed in the Office action mailed 5/26/05, and further in view of Walker (2,082,671), Stoner (1,348,761), Porter (1,382,383), Cassidy (1,623,165), Steiner (2,999,511), and Schiller (2,315,164).

As discussed in the last Office action, the art is replete with examples of edible (or inedible) substrates that are employed to decorate cakes and other foods and wherein the substrates can be material that is a film, which film would have the capability of wrapping, and wherein the substrates can be printed. Claims 21 and 35 now recite that the wrap is "fully wrapped" around the vertical walls. As discussed above, this recitation appears to be New Matter. In any case, as evidenced by Walker, Stoner, Porter, Cassidy, Steiner, and Schiller, it is notoriously old in the art to print a distinguishing scene on a wrapper and wrap a food in the printed/decorated wrapper such that the scene is imparted to the wrapped food and, usually, in combination with other decorative elements, imparts to the food a three dimensional effect. To therefore modify the combination and fully wrap at least the vertical side walls with the

Art Unit: 1761

decorated/printed wrapping material would have been unequivocally obvious. Claim 28 is rejected for the reasons given above. Note, too, the art teaches both edible and inedible printed decorations and that the printed decorations can be peelable from a substrate. Finally, it is noted that claims 21, 28 and 35 employ the word "consists". As noted in the last Office action, all of applicants decorative expedients are conventional and to mix and match conventional decorative expedients is seen to have been nothing more than obvious matters of choice and/or design and an obvious matter of personal taste—an obvious exercise in conventional edible arts and crafts, if you will.

All of applicant's remarks filed 11/3/05 have been fully and carefully considered but are not found to be convincing. Whereas applicant concedes that it was known to provide three dimensional cakes, applicant apparently is urging that none of the references teach the edible base with the particular two dimensional decoration-i.e.an edible, printed substrate. This urging is totally unconvincing. Once it was known to provide decorative cakes with a base and an upper portion, wherein both portions are provided with decorations, the particular conventional decoration one chooses to use, for its art recognized and applicant's intended function, is seen to have been obvious. Not only is applicant not the inventor of printed, edible film material as evidenced, for example, by Stewart, applicant is also not the inventor of the concept of decorating a side of a food (including cakes) with the printed, edible film as evidenced by Stewart, nor is applicant the inventor of using printed, wrapping material to fully wrap a food to impart a recognizable design and decoration to the food.

Art Unit: 1761

Applicant's amendment necessitated the new ground(s) of rejection presented in this Office action. Accordingly, **THIS ACTION IS MADE FINAL**. See MPEP § 706.07(a). Applicant is reminded of the extension of time policy as set forth in 37 CFR 1.136(a).

A shortened statutory period for reply to this final action is set to expire THREE MONTHS from the mailing date of this action. In the event a first reply is filed within TWO MONTHS of the mailing date of this final action and the advisory action is not mailed until after the end of the THREE-MONTH shortened statutory period, then the shortened statutory period will expire on the date the advisory action is mailed, and any extension fee pursuant to 37 CFR 1.136(a) will be calculated from the mailing date of the advisory action. In no event, however, will the statutory period for reply expire later than SIX MONTHS from the date of this final action.

Any inquiry concerning this communication or earlier communications from the examiner should be directed to Steven L. Weinstein whose telephone number is 571-272-1410. The examiner can normally be reached on Monday-Friday from 7:00AM-2:30PM.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Milton Cano, can be reached on 571-272-1398. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR.

Application/Control Number: 10/635,350

Page 5

Art Unit: 1761

Status information for unpublished applications is available through Private PAIR only.

For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free).

Steve Weinstein  
**STEVE WEINSTEIN**  
**PRIMARY EXAMINER**  
1/19/06